Supreme Court, U.S.
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No. 97-647

In The

Supreme Court of the United States

October Term, 1997

REGENIA F. QUINLEY,

Petitioner,

vs.

STATE FARM INSURANCE CORPORATION,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Did the court of appeals correctly affirm the district court's decision granting summary judgment in favor of respondent State Farm on petitioner Regenia Quinley's claims under the *American's with Disabilities Act*?

PARTIES

The parties are as follows:

Petitioner: Regenia F. Quinley.

Respondent: State Farm Mutual Automobile Insurance Company, incorrectly identified in the complaint as State Farm Insurance Corporation. State Farm Fire and Casualty Company, State Farm General Insurance Company and State Farm Life Insurance Company are affiliated companies.

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RESPONDENT'S BRIEF IN OPPOSITION

Quinley's petition does not cite a reason for review under *Supreme Court Rule* 10, nor does it cite any other "compelling" reason for review by this Court. The petition characterizes the "questions presented" as whether the courts below "effectively ruled" that

> the *American's with Disabilities Act* does not prohibit or restrict the removal of reasonable accommodations afforded to a qualified individual [with a disability] so as to cause that . . . individual working with reasonable accommodations to lose [her] employment.

Quinley's statement of the issue is contrived. It has nothing to do with the uncontroverted facts in the record or the decision of the courts below.

Clearly, if a reasonable accommodation is required to enable an otherwise qualified disabled individual to perform the job, the employer must provide (or continue to provide) the accommodation absent undue hardship on the employer's business. 42 U.S.C. §§ 12111(a), 12112(a) and 12112(b)(5)(A). Neither the district court nor the court of appeals held otherwise.

In substance, Quinley simply asks this Court to conduct a *de novo* review of the record to determine whether the court of appeals and the district court correctly concluded that there was no genuine issue of material fact and that State Farm was entitled to a judgment as a matter of law. *Fed.R.Civ.P.* 56.

OPINIONS BELOW

The district court's order granting summary judgment is unreported. A copy of the order is reproduced in *Appendix A*. The decision of the court of appeals affirming the district court's decision without opinion is reported at 113 F.3d 1251 (11th Cir. 1997).

STATUTES

The relevant rules, statutes and regulations, which are set forth verbatim in *Appendix B*, are as follows:

1. *American's with Disabilities Act* (Subchapter I), 42 U.S.C. §§ 12111 through 12117.

2. *Fed.R.Civ.P.* 56.

3. *Eleventh Circuit Rule* 36-1.

STATEMENT OF THE CASE[1]

From 1985 until June 1993, State Farm employed Quinley as a claims secretary, a job that entailed clerical and support work for five State Farm claims representatives and, occasionally, putting away supplies.

Quinley's alleged "disability" consists of three minimally bulging discs, an injury she sustained in a 1986 car

[1] The "Statement of the Case" in the petition misstates certain facts in the record, fails to present material facts, and distorts the chronology of material facts. *See* Supreme Court Rules 14.1(g), 15.1 and 24.2.

accident. Following two subsequent car accidents, one in mid-1992 and one in August 1993, Quinley suffered occasional back pain and her doctor periodically advised her to avoid "heavy lifting." Notwithstanding her bulging discs, and a multitude of other maladies (*e.g.* sinusitis; bladder infections; bronchitis; TMJ and related headaches; a broken hand; a broken foot; a sleep disorder; psychological problems) that resulted in several hundred days of absences over the years, Quinley satisfactorily performed all of her job duties. No doctor ever imposed any permanent or long term restrictions on Quinley's ability to perform any job duty or to engage in any major life activity.

In June 1993, Quinley was laterally reassigned to a job as a mail and file clerk as part of a reorganization of office personnel prompted by the demotion of another employee. There were two other mail and file clerks. Although Quinley occasionally put away supplies, the same job she occasionally performed as a secretary, that particular job was regularly performed by one of the other mail and file clerks.

When Quinley was assigned to the clerk's job, there were no restrictions on her ability to perform any of the job duties. She *never* complained to anyone about the reassignment, and she *never* asked to return to her former job. Indeed, Quinley testified that she "liked" her new job, and that she "didn't want to go back" to her former job.

Two months after the reassignment, Quinley wrecked her car for the third time, causing a recurrence of the back pain she suffered after her first two car accidents. Her

orthopedist noted that she had "minimal posterior bulges of three discs" and treated her for back "strain." The orthopedist subsequently released Quinley to return to work as a mail and file clerk with no restrictions.

In mid-January 1994, Quinley had her first and only conversation with a supervisor about alleged difficulty performing one job duty – putting away heavy supplies. When Quinley told her supervisor that putting away these supplies hurt her back, he "accepted it," and told her

> that she was the best judge of what she could do and couldn't do, and that, if she had something to lift, [he] would either do it, or [he would] see that someone else could do it for her.

A week later, Quinley delivered a note from her orthopedist stating that "she should not be expected to do any *heavy* lifting," and that she needed to be "extremely careful about *excessive* bending and positioning." Upon receiving the note, Quinley's supervisor reiterated that she was not to perform any job that involved lifting, "then or at any time."

> Regenia, if you have a problem let me know, you're the best judge. I'll either do it myself or I will get someone else to do it. You don't need to be lifting.

Quinley was never again required to put away heavy supplies.

In July 1994, more than one year after her assignment to the clerk's job, Quinley began an extended medical leave for a sleep disorder. Her leave was prolonged when she broke her hand and later fractured her foot.

In October 1994, shortly after Quinley exhausted 100 days of paid sick leave, she reported to work and announced that she was ready to return despite a noticeable limp and a cast on her fractured foot. She produced a doctor's certificate imposing temporary restrictions on her ability to engage in "prolonged walking or constant standing, squatting, climbing stairs [and] ladders." Quinley did not ask to return to her former job as a secretary. She sought only to return to her job as a mail and file clerk.

Because of Quinley's previous back problems, her extended leave for a sleep disorder, a history of psychological problems, her broken hand and fractured foot, State Farm required Quinley to undergo an independent "fitness for duty" evaluation before returning to work. Quinley underwent the evaluation and was released to return to work as a mail and file clerk with no restrictions on her ability to perform any job duty. She returned to work in January 1995.[2]

Because Quinley had missed *several hundred work days* during the preceding three years, most of which was unrelated to her alleged disability, she was advised that her attendance would have to improve. It did not. During the first two weeks after she returned, Quinley missed 3½ work days, all for reasons unrelated to her back condition (*e.g.* headaches, diarrhea, sores in her mouth,

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[2] Between the time Quinley first sought to return to work as a mail and file clerk and her successful completion of the fitness for duty evaluation, she filed her only EEOC charge of discrimination claiming that she had been denied reinstatement because of her alleged disability.

blisters in her mouth, a sore throat). She was discharged in February 1995 for continuing chronic absenteeism. She did not file an EEOC charge on her discharge.

Quinley sued State Farm claiming that she had been reassigned to the mail and file clerk job in June 1993 because of her alleged disability, and that she was denied reinstatement in October 1994 for the same reason. The district court granted summary judgment, primarily on the ground that Quinley did not have a "disability" covered under the *ADA*. The court of appeals affirmed without opinion, concluding that summary judgment was "supported by the record" and that "an opinion would have no precedential value." *Eleventh Circuit Rule* 36-1.

REASONS WHY THE PETITION SHOULD BE DENIED

I.

This Case Does Not Involve the Question Presented In Quinley's Petition.

Quinley's petition suggests that summary judgement on her *ADA* claims "constitute[s] in effect a ruling" that the *ADA* does not prohibit an employer from removing a reasonable accommodation previously provided to a qualified disabled individual, "resulting in [her] loss of employment." This is pure fabrication. Quinley's characterization of the issue misstates the decision of the district court and disregards the uncontroverted facts.

First, neither the district court nor the court of appeals held that an employer could eliminate a previously provided reasonable accommodation, thereby rendering a qualified disabled individual unable to perform the job. On the contrary, the courts concluded that Quinley was not an individual with a "disability" under the *ADA*. The periodic limitations on her ability to perform heavy lifting (limitations imposed after each of her three car accidents) did not substantially limit a major life activity, including her ability to work. *See e.g. Williams v. Channel Master, Inc. Satellite Sys.*, 101 F.3d 346, 349 (4th Cir. 1996) (As a matter of law, a 25-pound lifting limitation – particularly when compared to an average person's abilities – did not constitute a significant restriction on one's ability to lift, work, or perform any other life activity under the *ADA*.). In concluding that Quinley did not have a "disability," the district court and the court of appeals simply applied well settled law to the uncontroverted facts in the record.

Second, Quinley's issue bears no relationship to the facts. She was not assigned to a secretarial job as a reasonable accommodation for her purported disability. She was hired to perform that job and did so satisfactorily for seven years, *albeit* with excessive absenteeism for a spate of reasons. She was assigned to a mail and file clerk's job in June 1993 for reasons unrelated to her alleged disability. At that time, there were no restrictions on her ability to perform any job duty or to engage in any major life activity. Thereafter, Quinley *never* asked to be returned to her old job because she "liked" her new job and "didn't want to go back." Following her extended leave of absence for a sleep disorder, Quinley sought to

return to work as a mail and file clerk, not as a secretary. After a fitness for duty evaluation established that Quinley could return to her job as a mail and file clerk *with no restrictions* on her ability to perform any job duties, she returned to work. Her subsequent discharge for chronic absenteeism had nothing to do with her physical ability to perform her job duties. In sum, the argument that Quinley should have been allowed to remain in, and later to return to, her former job as a secretary as a "reasonable accommodation" for an alleged disability was conjured-up by her attorney.[3]

Finally, even if Quinley were a qualified individual with a disability, the only accommodation she ever needed was to be relieved of one job duty – putting away heavy supplies. Her supervisor granted that accommodation. She was instructed never to perform heavy lifting. Having effectively "accommodated" Quinley's alleged disability, State Farm was required to do nothing more. 29 C.F.R. § 1630 *Appendix* (EEOC *Interpretive Guidelines*) ("the employer providing the accommodation has the ultimate discretion to choose between effective accommodations."); *EEOC Technical Assistance Manual* § 3.10.5.

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[3] Quinley did not file an EEOC charge challenging her discharge. The district court correctly concluded that any claim related to her discharge under the *ADA* was barred because she failed to fulfill the statutory prerequisites for such a claim. *Appendix A* at A-6-A-8.

II.

The Courts Below Correctly Applied the Standards for Granting Summary Judgment.

In reality, Quinley asks this Court to conduct a *de novo* review of the record to determine whether the district court and the court of appeals correctly concluded that there was no genuine issue of material fact and that State Farm was entitled to a judgment as a matter of law. *Fed.R.Civ.P.* 56. Her petition implies that the courts did not correctly apply the appropriate standards for granting summary judgment. She is wrong.

The district court cited and applied the correct standards for granting summary judgment under *Fed.R.Civ.P.* 56. *See Appendix A,* "Standard of Review." *Citing Eleventh Circuit Rule* 36-1, the court of appeals concluded that summary judgment was "supported by the record," and affirmed without opinion. 113 F.3d 1251.

CONCLUSION

For the foregoing reasons, the petition for certiorari should be *denied*.

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APPENDIX A

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA SOUTHERN DIVISION

REGINIA [sic] F. QUINLEY,

Plaintiff,

v. **CIVIL ACTION NO. 95-0271-RV-C**

STATE FARM INSURANCE CORP.,

Defendant.

ORDER

In this case, plaintiff Reginia [sic] F. Quinley charges that defendant State Farm Insurance Corporation ("State Farm") discriminated against her in violation of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101, *et seq.* The matter is presently before the Court on State Farm's motion for summary judgment and supporting brief (tabs 12 & 13). Ms. Quinley has filed a response in opposition to defendant's motion. *See* tabs 24, 25 & 26. State Farm has filed a reply (tab 27) along with a "motion to strike the affidavit of plaintiff Reginia [sic] Quinley" (tab 28).

This case is also before the Court on State Farm's "motion for continuance of pretrial conference" (tab 29). Ms. Quinley filed a response (tab 30) in opposition to this motion. Subsequently, however, Ms. Quinley withdrew her objection and consented to the continuance. *See* tab 31. The Court will address these motions in logical order.

I. BACKGROUND[1]

State Farm's claims office in Mobile, Alabama, hired Ms. Quinley as a claims secretary in 1985. She remained in that position until June 1993, when she was assigned to a job as a mail and file clerk. In late July 1994, Ms. Quinley began a continuous medical leave of absence for a sleep disorder. She asked to return to work on October 10, 1994, but State Farm delayed her return until it obtained an independent "fitness for duty" evaluation to determine her ability to perform her job duties. Ms. Quinley returned to work on January 16, 1995 but was terminated approximately three weeks later on February 6, 1995.

During the time she was employed by State Farm, Ms. Quinley experienced a wide variety of physical and psychological problems. The most significant of these was pain stemming from a back injury sustained in a September 1986 automobile accident, and aggravated in

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[1] In compliance with the Local Rules of this Court, State Farm has filed proposed findings of fact along with its motion for summary judgment. In her response to the motion, Ms. Quinley does not set forth her own version of the facts or dispute any of State Farm's factual allegations. Furthermore, the only evidentiary materials Ms. Quinley has submitted are copies of certain medical records and doctor's letters which State Farm had already filed and her own affidavit with an attached exhibit. State Farm has moved (tab 28) to strike certain portions of Ms. Quinley's affidavit. After careful consideration, the Court finds that the motion to strike (tab 28) is due to be, and hereby is, **GRANTED** for the reasons set forth in State Farm's motion. In light of the foregoing, the statement of facts set forth in this order are drawn largely from State Farm's proposed findings of fact and the supporting materials filed therewith.

two subsequent car accidents in August 1992 and September 1993. In addition to the back injury, Ms. Quinley suffered a broken hand, migraine headaches, periodic chest congestion and bronchitis, "pathological grief reaction," depression, multiple syncopal episodes, diarrhea, abdominal cramps, sinusitis, high blood pressure, and a host of other ailments.

Ms. Quinley's medical and psychological problems caused her to be absent from work frequently. In 1990, these problems caused her to miss all or part of 34 work days; in 1991, all or part of 27 work days; and in 1992, all or part of 60 work days. In 1993, Ms. Quinley was absent all or part of 40 work days before her third automobile accident occurred in September 1993.

On July 25, 1994, she began a 2½ month medical leave because of a sleep disorder. While on medical leave, Ms. Quinley fell off a swing at home and fractured her foot, requiring an extension of her leave. Between her third car accident in September 1993 and when she first sought to return to work from medical leave on October 10, 1994, Ms. Quinley missed all or part of 177 work days.

On October 14, 1994, Ms. Quinley filed a charge of disability discrimination with the Equal Employment Opportunity Commission ("EEOC") asserting the following:

> I. I was hired by [State Farm] in November 1985. I have been denied reasonable accommodations and on October 10, 1994 was denied the opportunity to return to work following a medical leave of absence.

II. No reasons have been offered for these actions.

III. I believe I have been discriminated against because of my disability, in violation of the Americans with Disabilities Act, in that I was treated in this manner.

On February 7, 1995, the EEOC issued Ms. Quinley a "notice of right to sue." On April 3, 1995, she commenced the instant action.

II. DISCUSSION

A. Jurisdiction

The Court has jurisdiction over this case under 28 U.S.C. §§ 1331 and 1343. Venue is appropriate in this judicial district pursuant to 28 U.S.C. § 1391(b).

B. Standard of Review

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); *see Rice v. Branigar Org., Inc.*, 922 F.2d 788, 790 (11th Cir. 1991). The clear language of Rule 56(c) "mandates the entry of summary judgment, after adequate time for discovery, and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden

of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

> The party moving for summary judgment
>
> > bears the initial burden to show the district court, by reference to materials on file, that there are no genuine issues of material fact that should be decided at trial. Only when that burden has been met does the burden shift to the non-moving party to demonstrate that there is indeed a material issue of fact that precludes summary judgment.

Clark v. Coats & Clark, Inc., 929 F.2d 604, 608 (11th Cir. 1991); *see Mercantile Bank & Trust Co. v. Fidelity & Deposit Co.*, 750 F.2d 838 (11th Cir. 1985). The mere existence of a scintilla of evidence in support of the nonmovant's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986). At all times, however, the Court must view the evidence in the light most favorable to the non-moving party, drawing all reasonable inferences and resolving all reasonable doubts in her favor. *Addickes v. S. H. Kress & Co.*, 398 U.S. 144 (1970); *Barnes v. Southwest Forest Indus.*, 814 F.2d 607, 609 (11th Cir. 1987).

C. Conclusions of Law

1. Scope of ADA claim

The ADA is a federal statute that prohibits employment discrimination against disabled individuals. Title I

of the ADA, under which Ms. Quinley's claims fall, incorporates by reference the enforcement mechanisms provided for in Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* *See* 42 U.S.C. § 12117(a). A claimant who wishes to bring a Title VII action in federal court must first file a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC") "within one hundred and eighty days after the alleged unlawful employment practice occurred." 42 U.S.C. § 2000e-5(e). Title VII further provides that "a civil action may be brought against the respondent named in the charge . . . by the person claiming to be aggrieved" within ninety days of receipt of a "right-to-sue" letter from the EEOC. 42 U.S.C. § 2000e-5(f)(1).

Although the timeliness of filing an EEOC charge is in the nature of a statute of limitations, *see Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 393 (1982), the act of filing is a jurisdictional prerequisite to the commencement of a Title VII, or ADA, suit in federal court, *see Thomas v. Kroger Co.*, 24 F.3d 147, 150 (11th Cir. 1994). Thus, unless a plaintiff has filed a charge with the EEOC and received a right to sue letter, the district court lacks subject matter jurisdiction to hear that plaintiff's ADA claim. *See Stewart v. County of Brown*, ___ F.3d ___, No. 95-2776, 1996 WL 313212 (7th Cir. June 12, 1996); *McSherry v. Trans World Airlines, Inc.*, 81 F.3d 739 (8th Cir. 1996); *Redlich v. Albany Law School of Union University*, No. 94-CV-1021, 1995 WL 581244, at *2 (N.D.N.Y. Oct. 3, 1995).

Here, State Farm accurately notes that although Ms. Quinley has received a right to sue letter, the precise claims of disability discrimination covered by the letter or by the complaint are unclear. Consequently, State Farm

articulates what it perceives are all the claims Ms. Quinley could possibly be intending to assert here. These are: (1) a claim that her reassignment from claims secretary to mail and file clerk in June 1993 was discriminatory because while she could perform the duties of the former position, her back condition prevented her from performing certain duties of the latter; (2) a claim that State Farm discriminated against her by delaying her return to work after her 1994 medical leave of absence; and (3) a claim that her termination on February 6, 1995 was discriminatory.

Having thus stated Ms. Quinley's potential claims, State Farm contends that only the second is properly before the Court. Specifically, State Farm argues that the first potential claim is time barred because Ms. Quinley filed her only EEOC charge on October 14, 1994, well over 180 days after her June 1993 reassignment and that the third potential claim is barred because Quinley never filed an EEOC charge related to her discharge.

The Court finds State Farm's articulation of the possible claims here helpful, but disagrees with defendant regarding the viability of the first potential claim stated. It is inferable from Ms. Quinley's EEOC charge, and clear from her complaint, that she is asserting that State Farm denied her a reasonable accommodation for her alleged disability by its ongoing failure or refusal to reassign her to her old secretarial position. The first potential claim set forth above is merely a statement that her removal from that position in the first place was discriminatory. As such, it states a claim of alleged discrimination that was ongoing at the time Ms. Quinley filed her EEOC charge and, thus, it is not time barred. *See Stewart*, 1996 WL at *3

("In order to benefit from the "continuing discrimination" theory, [a plaintiff] must show that the alleged untimely act (the transfer) and the timely act (the failure to accommodate his physical disability) are 'related enough to constitute a continuing violation.' ") (quoting *Selan v. Kiley*, 969 F.2d 560, 564-65 (7th Cir. 1992)).

The Court concurs with State Farm regarding the third potential claim, however. Ms. Quinley was fired on February 6, 1995, which was not only several months after she filed her EEOC charge, but also only one day before the EEOC issued her a notice of right to sue. Obviously, that right to sue letter could not cover a claim for her discharge.

Thus, the Court finds that it has two ADA claims before it. First, that State Farm discriminated against Ms. Quinley by removing her from her secretarial position and failing to accommodate her alleged disability by reassigning her to that position. Second, that State Farm discriminated against Ms. Quinley by delaying her return to work following her 1994 medical leave of absence.

2. Prima facie case under the ADA

The ADA provides that no covered employer "shall discriminate against a qualified individual with a disability because of the disability of such individual [in any of the] terms, conditions [or] privileges of employment." 42 U.S.C. § 12112(a). Indeed, the ADA requires such employers to provide reasonable accommodations for known disabilities unless doing so would result in an undue hardship on the employer. 42 U.S.C.

§ 12112(b)(5)(A). "In order to establish a *prima facie* case of discrimination in violation of the ADA, a plaintiff must prove that (1) she has a disability; (2) she is a qualified individual; and (3) she was subjected to unlawful discrimination because of her disability." *Morisky v. Broward County*, 80 F.3d 445, 447 (11th Cir. 1996).

A "qualified individual with a disability" is "an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds." 42 U.S.C. § 12111(8). A "disability" is "(a) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (b) a record of such an impairment; or (c) being regarded as having such an impairment." 42 U.S.C. § 12102(2). The ADA does not define such terms as "physical or mental impairment," "major life activity," or "substantially limits." Instead, these definitions are found in the regulations Congress directed the EEOC to issue to implement the statute. *See* 42 U.S.C. § 12116 (providing EEOC with authority to issue implementing regulations); 29 C.F.R. Pt. 1630, Appendix to Part 1630 – Interpretive Guidance to Title I of the ADA.

Under the EEOC regulations, "physical impairment" is defined as "[a]ny physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine." 29 C.F.R. § 1630.2(h)(1). "Mental impairment" means "[a]ny mental or psychological disorder, such as

mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities." 29 C.F.R. § 1630.2(h)(2). "Major Life Activities means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working." 29 C.F.R. 1630.2(i).

"If an individual is not substantially limited[2] with respect to any other major life activity, the individual's ability to perform the major life activity of working should be considered. If an individual is substantially limited in any other major life activity, no determination should be made as to whether the individual is substantially limited in working." 29 C.F.R. § 1630, App., § 1630.2(j) (explanatory footnote added). "To determine whether a person is substantially limited in major life activity other than working, we look to whether that person can perform the normal activities of daily living." *Ray v. Glidden*, No. 95-11162, 1996 WL 284978 (5th Cir. June 14, 1996); *see Dutcher v. Ingalls Shipbuilding*, 53 F.3d 723, 726 & n.11 (5th Cir. 1995) (plaintiff who sustained serious injury to arm in gun accident not disabled under

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[2] The term substantially limited means:

> (i) Unable to perform a major life activity that the average person in the general population can perform; or
>
> (ii) Significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner or duration under which the average person in the population can perform the same major life activity.

29 C.F.R. 1630.2(j)(i) & (ii).

ADA where she could "feed herself, drive a car, attend her grooming, carry groceries, wash dishes, vacuum, and pick up trash" and attend to "all of the basic things" but where she was restricted from heavy lifting and repetitive rotational movements, and could not "pick up little things from the floor, . . . ha[d] trouble holding things up high or real tight for long periods of time, and . . . sometimes ha[d] problems turning the car's ignition"). With respect to the major life activity of working,

> [t]he term substantially limits means significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills and abilities. The inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working.

29 C.F.R. § 1630.2(j)(3).

The primary ground on which State Farm seeks summary judgment here is its assertion that Ms. Quinley is not disabled for purposes of the ADA. Although Ms. Quinley suffered a multitude of illnesses and injuries during the time she worked for State Farm, her ADA claims are founded on her back problem. State Farm concedes that Ms. Quinley's bulging discs constitute a physical impairment, but contends that she cannot produce evidence that her impairment "substantially limits" any major life activity, including her ability to work.

In support of this contention, State Farm points out that (1) Quinley's doctors never imposed any permanent

restrictions on her ability to perform any major life activity or any job task and (2) an independent "fitness for duty" examination and work capacity evaluation conducted before Quinley returned to work in January, 1995, an examination and evaluation recommended by her own doctor, concluded with a finding that she could perform all her job duties as a mail and file clerk with no restrictions. *See* Abroms Exhs. 22, 23A, 23B, & 24. In response, Ms. Quinley argues that her bulging discs prevent her from "bending, lifting or stooping," thus rendering her disabled.

In considering whether Ms. Quinley's disc impairment constituted a disability at the times relevant to her complaint, the Court must first examine whether the impairment substantially limited a major life activity other than working. In this connection, the Court notes that Ms. Quinley's response to State Farm's summary judgment motion contains no assertion that she cannot "perform the normal activities of daily living." Furthermore, in her August 9, 1995 deposition, she stated that her daily activities include "cleaning house," preparing meals, visiting friends and caring for three young dogs. She also stated that she rides a bicycle and that, subsequent to her discharge from State Farm, she had been walking up to three miles a day until she developed phlebitis in her feet.

As against this, is Ms. Quinley's assertion that she cannot bend, lift[3] or stoop. In support of this assertion,

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[3] Ms. Quinley's own evaluation of her lifting capability is that she could lift objects weighing ten pounds but that anything over twenty pounds aggravated her back.

Quinley provides some medical records and several letters written by her orthopedist, Dr. Joe B. Ray.[4] Ms. Quinley's medical records confirm that she has mild bulging in her lumber [sic] vertebrae. Furthermore, Dr. Ray's letters evidence certain restrictions on Ms. Quinley's activities. Pertinent portions of those letters follow:

> Regenia Quinley has been under my care following a motor vehicle accident and was not able to work from 9/13/93 to 9/17/93.

Dr. Ray Letter, Sept. 20, 1993.

> Reginia [sic] Quinley has been under my care for strain of her back following a motor vehicle accident on 8/20/93. She as [sic] not been able to work since 9/29/93. She can return to work on 11/22/93.

Dr. Ray Letter, Nov. 22, 1993.

> I feel that although Ms. Quinley is largely improved from the aggravating factors of the accident of August 1993 . . . She certainly has a tendency toward easy aggravation, easier aggravation than before. She does have at least three bulging lumbar disc (sic) which may eventually require additional investigation and treatment. I recommend that she not be expected to do any heavy lifting. She will have to be extremely careful about excessive bending and positioning. She needs to get up and move around fairly

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[4] Ms. Quinley has also filed her own affidavit. However, the Court has already granted State Farm's motion to strike substantial portions of Ms. Quinley's affidavit. *See supra* footnote 1.

frequently in order to avoid stiffness and strain in the lower back.

Dr. Ray Letter, Jan. 26, 1994.

Reginia [sic] Quinley has minimal bulging disc (sic) . . . There was no evidence of a disc herniation. All of this has been aggravated by a motor vehicle accident that she was involved in. She is doing much better but still has episodes of distress from the waist up, and this is aggravated by bending and lifting. She does okay with sitting because she gets up and down frequently, but lifting really throws her into a spasm.

I feel that she is largely improved from the aggravating factors of the accident of August 1993 but she does have a tendency toward easy aggravation. She does have at least three bulging lumbar disc which may eventually require additional investigation and treatment. I recommend that she not be expected to do any excessive bending and positioning. She needs to get up and move about fairly frequently to avoid stiffness and strain in the low back.

If there is any further question about her condition I would recommend that she have a functional capacities evaluation.

Dr. Ray Letter, Feb. 25, 1994.

Reginia [sic] Quinley was seen and examined by me. She should continue to have the restriction on her work keeping her from doing excessive bending and heavy lifting.

Dr. Ray Letter, May 19, 1994.

Reginia [sic] Quinley is under my care for her fractured foot. She will need to stay off work

until I see her back on 10/6/94. A return to work date will be determined at that time.

Dr. Ray Letter, Sept. 29, 1994.

Reginia [sic] Quinley may return to light duty work on 10/10/94. She should not be expected to do prolonged walking or constant standing, squatting, squatting, climbing stairs, ladders. She needs to wear this comfort cast.

Dr. Ray Letter, Oct. 6, 1994.

Reginia [sic] Quinley was seen and examined by me on September 15, 1994 for navicular fracture of her left foot sustained on September 13, 1994 when a swing fell on her on her. She was put on crutches, placed in a cast walker boot, and given Cataflam 50mg to take tid. Ms. Quinley stated that she was already off work for a sleep disorder.

Ms. Quinley was last seen by me on October 6, 1994. She was still having a good bit of swelling, discomfort, and pain, but was tolerating her Comfort cast well. X-rays showed incomplete healing of the avulsion fractures. She was given a note to return to light duty work on October 10, 1994. She should not be expected to do prolonged walking, constant standing, any squatting, climbing stairs or ladders. She would need to continue to wear the Comfort cast. I will be seeing her back in three weeks for reevaluation.

Dr. Ray Letter, Oct. 12, 1994.

The Court is not impressed with Ms. Quinley's evidence. Initially, the Court notes that all of her supporting letters are dated subsequent to her June 1993 reassignment from secretary to mail and file clerk and to her third

motor vehicle accident. Thus, Ms. Quinley has produced no evidence that she was subject to physical restrictions at the time of her job reassignment. Second, the restrictions in Dr. Ray's October 6th and 12th, 1994 letters relate not to Ms. Quinley's back but to her fractured foot, a temporary injury which is not, and cannot be, the basis of her ADA claims. *See Vande Zande v. Wisconsin Dep't of Admin*, 44 F.3d 538, 544 (7th Cir. 1995) ("Intermittent, episodic impairments are not disabilities, the standard example being a broken leg.") Finally, all the letters submitted by Ms. Quinley are dated earlier than the independent "fitness for duty" examination and work capacity evaluation that were conducted before she returned to work in January 1995 and which concluded with the finding that she could perform all the duties of a mail and file clerk without restrictions.

In view of the above, the Court finds that Ms. Quinley's back condition does not substantially limit a major life activity other than working. Accordingly, the next inquiry is into whether her condition substantially limits the major life activity of working. In this regard, Ms. Quinley contends that she could perform all her duties as a mail and file clerk without difficulty except for putting away heavy supplies and shifting files. This assertion is unavailing, however, because the inability to perform some aspects of a job while retaining the ability to perform the work in general does not amount to a substantial limitation on the activity of working. *See Dutcher*, 53 F.3d at 727. Also, Ms. Quinley has produced no evidence that she is "restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes" as

is required to show a substantial limitation on work activity. *See* 29 C.F.R. § 1630.2(j)(2)(i).

In sum, while Quinley "may consider [herself] disabled, as that term is frequently used[,] Congress offered narrower relief to a more seriously deprived class of persons, when enacting the ADA." *O'Dell v. Altec Industries, Inc.*, No. 94-6180-CV-SJ-6, 1995 WL 611341, *4 (W.D. Mo. Oct. 16, 1995) (plaintiff not disabled under ADA although he was restricted to lifting no more than thirty-five pounds frequently and no more than fifty pounds occasionally because of back injury; court granted summary judgment for defendant employer); *see Ray v. Glidden*, ___ F.3d ___, 1996 WL 284978, (5th Cir. June 14, 1996) (plaintiff's inability to perform continuous, heavy lifting did not render him disabled under the ADA); *Wernick v. Federal Reserve Bank of New York*, No. 93 Civ. 2606, 1995 WL 598973 (S.D.N.Y. Oct. 10, 1995) (employee with bursitis and cervical and lumber [sic] spasms with restriction of "no prolonged sitting" is not disabled under the ADA; "an impairment does not substantially limit a person's ability to work if it disqualified her from only a narrow range of jobs;" summary judgment granted); *Lowe v. Angelo's Italian Foods, Inc.*, No. 93-1233, 1994 WL 675027 (D. Kan. Nov. 18, 1994) (as a matter of law, lifting restriction of no greater than fifteen pounds and then only on occasional basis, restriction on climbing stairs, and need to sit occasionally did not substantially limit any of plaintiff employee's major life activities); *Otis v. Canadian Valley-Reeves Meat Co.*, 884 F.Supp. 446 (W.D. Okla 1994), *aff'd*, 52 F.3d 338 (10th Cir. 1995) (seventy pound lifting restriction not restriction of any major life activity,

including work, thus plaintiff not disabled within meaning of ADA; summary judgment granted for defendant).

III. CONCLUSION

In light of the foregoing, the Court concludes that Ms. Quinley's back condition does not constitute a disability for purposes of the ADA.[5] Thus, she cannot make out a *prima facie* case of disability discrimination under the Act. Therefore, State Farm's motion for summary judgment (tab 12) is due to be, and hereby is **GRANTED**.[6] Accordingly, **FINAL JUDGMENT** is hereby **ENTERED** in favor of defendant State Farm and against plaintiff Reginia [sic] Quinley on her ADA claims. Ms. Quinley shall have and recover **NOTHING** from State

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[5] As previously stated, a plaintiff may be disabled for purposes of the ADA if her employer regards her as having an impairment that substantially limits a major life activity even though she has no such impairment. *See* 42 U.S.C. § 12102(2)(c). Ms. Quinley does not assert her ADA claims on this basis, however. In any event, it is clear that State Farm did not believe that Ms. Quinley was disabled under the ADA. *See* Abroms Aff. ¶ 16 (State Farm Medical Director concluded, based on "work capacity evaluation" and "fitness for duty" examination that "Ms. Quinley did not have a physical disability that substantially impaired a major life activity or that she would render her unable to perform the essential job duties of her job").

[6] State Farm's "motion for continuance of pretrial conference" (tab 29) is thus deemed **MOOT**.

Farm on these claims, and the claims are hereby **DISMISSED with prejudice**. Each party will bear its own costs.

DONE this the 26 day of June, 1996.

/s/ Richard W. Vollmer, Jr.
UNITED STATES
DISTRICT JUDGE